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UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF NEW YORK

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UNITED STATES OF AMERICA,

Plaintiff,

Civil Action  
No. CV-01-5414

- against -

ADVANCED COATING TECHNIQUES, INC.,

(Irizarry, J.)  
(M. Orenstein, M.J.)

Defendant.

- - - - -X

CONSENT JUDGMENT

WHEREAS, Plaintiff the United States of America ("United States"), on behalf of the Administrator of the United States Environmental Protection Agency ("EPA"), filed a complaint in this matter pursuant to Section 113 of the Clean Air Act ("CAA"), 42 U.S.C. § 7413, seeking civil penalties for violations by Advanced Coating Techniques, Inc. ("Advanced Coating") of Section 112 of the CAA, 42 U.S.C. § 7412, and the National Emission Standards for Chromium Emissions from Hard and Decorative Chromium Electroplating and Chromium Anodizing Tanks 40 C.F.R. Part 63, Subpart N; and

WHEREAS, the United States and Advanced Coating agree, and this Court by entering this Consent Judgment finds, that this

Consent Judgment has been negotiated by the United States and Advanced Coating in good faith, that settlement of this matter will avoid prolonged and complicated litigation between the United States and Advanced Coating, and that this Consent Judgment is fair, reasonable, and in the public interest; and

WHEREAS, this Consent Judgment constitutes the final, complete and exclusive agreement and understanding between the United States and Advanced Coating with respect to the settlement embodied in this Consent Judgment, and the United States and Advanced Coating acknowledge that there are no representations, agreements or understandings relating to the settlement other than those expressly contained in this Consent Judgment; and

THEREFORE, with the consent of the United States and Advanced Coating, it is ORDERED, ADJUDGED, AND DECREED:

I. JURISDICTION AND VENUE

1. This Court has jurisdiction over the subject matter of this action and the parties pursuant to 28 U.S.C. §§ 1331, 1345 and 1355 and Section 113(b) of the CAA, 42 U.S.C. § 7413(b).

2. Venue is proper in this district pursuant to 28 U.S.C. §§ 1391(b) and 1391(c) and § 113(b) of the CAA, 42 U.S.C. § 7413(b).

3. Advanced Coating consents to and shall not challenge entry of this Consent Judgment or this Court's

jurisdiction to enter and enforce this Consent Judgment.

## II. PARTIES BOUND

4. This Consent Judgment is binding upon the United States and Advanced Coating and their servants, employees, officers, directors, agents, successors and assigns.

5. Any change in ownership or corporate or other legal status of Advanced Coating, including but not limited to, any transfer of assets or real or personal property, shall in no way alter the status or responsibilities of Advanced Coating under this Consent Judgment.

## III. DEFINITIONS

6. Unless otherwise expressly provided herein, terms used in this Consent Judgment that are defined in the CAA or in regulations promulgated thereunder shall have the meaning assigned to them in the CAA and in such regulations. Whenever terms listed below are used in this Consent Judgment, the following definitions shall apply:

a) "CAA" shall mean the Clean Air Act, 42 U.S.C.

§§ 7401, et seq.;

b) "Complaint" shall mean the complaint filed by the United States of America against Advanced Coating in the United States District Court for the Eastern District of New York, entitled United States of America v. Advanced Coating Techniques, Inc., Civil Action No. CV-01-5414 (Irizarry, J.);

c) "Consent Judgment" or "Judgment" shall mean this Consent Judgment;

d) "Day" shall mean a calendar day. In computing any period of time under this Consent Judgment, where the last day would fall on a Saturday, Sunday, or federal holiday, the period shall run until the close of business of the next business day;

e) "DOJ" shall mean the United States Department of Justice and any successor departments, agencies or instrumentalities of the United States;

f) "EPA" shall mean the United States Environmental Protection Agency and any successor departments, agencies or instrumentalities of the United States of America;

g) "Effective Date" shall mean the date that this Consent Judgment is entered by the Court;

h) "Advanced Coating" shall mean Advanced Coating Techniques, Inc.; and

i) "United States" shall mean the United States of America, its departments, agencies and instrumentalities, on behalf of the EPA.

#### IV. CIVIL PENALTY

7. Advanced Coating shall pay to the United States a civil penalty of \$200,000.00 (the "Settlement Amount") in accordance with the provisions of Paragraph 8, below.

8. Advanced Coating shall pay the Settlement Amount to the United States in sixty equal monthly installments of \$3,505.55, which includes interest on the Settlement Amount calculated at two percent per annum accruing from the Effective Date, amortized over the five year payment period. Advanced Coating shall make the first installment payment within thirty (30) days of the Effective Date and shall make each installment payment monthly thereafter. Advanced Coating shall pay the Settlement Agreement installment payments by checks payable to "United States Treasury" and delivered to the U.S. Attorney's Office, Eastern District of New York. Payment shall reference the full caption of this action, Civil Action No. CV-01-5414 (E.D.N.Y.), and USAO File No. 2000v03050. Any funds received by the United States after 4:00 p.m. Eastern Standard Time shall be credited on the next business day. At the time of payment, Advanced Coating shall notify EPA and DOJ in writing that payment has been made, in accordance with Section V (Notices and Submissions).

9. The Settlement Amount is a penalty within the meaning of Section 162(f) of the Internal Revenue Code, 26 U.S.C. § 162(f), and is not deductible for federal, state or local tax purposes.

10. In the event that any payment required by this

Section is not received when due, the United States may declare the full remaining principal amount of the Settlement Amount to be immediately due and owing, and Interest shall continue to accrue on the unpaid balance through the date of payment.

V. NOTICES AND SUBMISSIONS

11. Unless otherwise provided herein, notifications and submissions to or communications with the EPA or the U.S. Attorney's Office, Eastern District of New York and DOJ shall be deemed submitted on the date they are postmarked and sent either by overnight receipt mail service or by certified or registered mail, return receipt requested.

12. All notices, submissions, or communications in connection with this Consent Judgment shall be directed to the individuals at the addresses specified below:

As to the United States:

Kevin P. Mulry  
Assistant U.S. Attorney  
U.S. Attorney's Office  
Eastern District of New York  
147 Pierrepont Street  
Brooklyn, New York 11201

Chief, Environmental Enforcement Section  
Environment and Natural Resources Division  
U.S. Department of Justice  
P.O. Box 7611  
Washington, D.C. 20044-7611

Flaire Hope Mills, Esq.  
Assistant Regional Counsel  
U.S. Environmental Protection Agency  
Region 2  
290 Broadway, 16<sup>th</sup> Floor  
New York, NY 10007

As to Advanced Coating:

Harold Seligman, Esq.  
Long, Tuminello, Besso, Seligman  
Quinlan & Werner  
120 Fourth Avenue  
Bay Shore, New York 11706-0420

13. The Parties shall provide each other with written notification of any change in the names or addresses of the individual(s) to whom all notices, submissions and communications should be directed, as set forth in Paragraph 12, above.

14. Any notices, submissions and communications submitted to the United States shall reference the full caption of this action, Civil Action No. CV-01-5414 (E.D.N.Y.), USAO File No. 2000v03050, and DJ No. \_\_\_\_\_.

VI. COSTS OF SUIT

15. Each Party shall bear its own costs, including attorneys' fees.

16. If the United States brings an action to enforce this Consent Judgment, Advanced Coating shall reimburse the United States for all costs of such action, including but not limited to costs of attorney time.

VII. BANKRUPTCY, INSOLVENCY OR REORGANIZATION

17. Advanced Coating expressly warrants that it has reviewed its financial situation and that it is currently solvent within the meaning of 11 U.S.C. § 547(b)(3), and it believes it will remain solvent following its payment to the United States hereunder. Further, the parties expressly warrant that, in evaluating whether to execute this Consent Judgment, the parties (a) have intended that the mutual promises, covenants, and obligations set forth herein constitute a contemporaneous exchange for new value given to Advanced Coating, within the meaning of 11 U.S.C. § 547(c)(1), and (b) have concluded that these mutual promises, covenants and obligations do, in fact, constitute a contemporaneous exchange.

18. In the event that Advanced Coating commences, or a third party commences, within 91 days of the effective date of this Consent Judgment, any case, proceeding, or other action (a) under any law relating to bankruptcy, insolvency, reorganization or relief of debtors, seeking to have any order for relief of Advanced Coating's debts, or seeking to adjudicate Advanced Coating as bankrupt or insolvent, or (b) seeking appointment of a receiver, trustee, custodian, or other similar official for Advanced Coating or for all or any substantial part of Advanced Coating's assets, Advanced Coating agrees as follows:

a. In the event that Advanced Coating's



obligations hereunder are avoided for any reason, including, but not limited to, through the exercise of a trustee's avoidance powers under the Bankruptcy Code, the United States, at its sole option, may rescind the covenants in this Consent Judgment, and bring any claim against Advanced Coating for the claims that would otherwise be covered by Paragraph 19 below. If the United States chooses to do so, Advanced Coating agrees that (i) any such claims, actions or proceedings brought by the United States are not subject to an "automatic stay" pursuant to 11 U.S.C. § 362(a) as a result of the action, case, or proceeding described in the first clause of this Paragraph, and that Advanced Coating will not argue or otherwise contend that the United States's claims, actions, or proceedings are subject to an automatic stay; and (ii) Advanced Coating will not plead, argue, or otherwise raise any defenses under the theories of statute of limitations, laches, estoppel, or similar theories, to any such claims, actions or proceedings, which are brought by the United States within 180 calendar days of written notification to Advanced Coating that the covenants herein have been rescinded pursuant to this Paragraph, except to the extent that such defenses were available on the execution of this Consent Judgment by Advanced Coating.

b. Advanced Coating acknowledges that the agreements in this Paragraph are provided in exchange for valuable consideration provided in this Consent Judgment.

#### VIII. CONTINUING JURISDICTION

19. This Court shall retain jurisdiction over the subject matter of this action and the Parties to this Consent Judgment to enforce the terms and conditions of this Consent Judgment and to resolve all disputes arising hereunder as may be necessary for the construction or execution of this Consent Judgment.

#### IX. GENERAL PROVISIONS

20. Complete performance by Advanced Coating of all of its obligations under this Consent Judgment shall fully satisfy all civil liability of Advanced Coating for the violations alleged in the Complaint. Nothing in the Consent Judgment shall be construed to resolve any claims, or otherwise affect Advanced Coating's liability, with respect to violations of any applicable Federal or State law or regulations, other than the violations specifically alleged in the Complaint. This Consent Judgment does not resolve any claims against Advanced Coating for criminal liability.

21. This Consent Judgment shall not relieve Advanced Coating of its obligation to comply with all applicable provisions of Federal, State or local law, and with any order of the Court.

22. This Consent Judgment does not limit or affect the rights of Advanced Coating or the United States against any third parties and does not create any rights for any third parties.

23. This Consent Judgment constitutes the entire agreement between the Parties. Any modification of this Consent Judgment must be in writing and approved by the Court. Any such written modification must be agreed to and signed by the Parties to this Consent Judgment.

24. The undersigned signatories represent that they are fully authorized to enter into the terms and conditions of this Consent Judgment and to execute and legally bind the party he or she represents to this document.

25. The parties agree and acknowledge that final approval by the United States and entry of this Consent Judgment is subject to the requirements of 28 C.F.R. § 50.7, which provides for notice and an opportunity for public comment. Advanced Coating consents to the entry of this Consent Judgment without further notice. The United States' consent to the entry of this Consent Judgment is subject to publication of notice thereof in the Federal Register pursuant to 28 C.F.R. § 50.7, and an opportunity to consider comments thereon, prior to requesting that the Court approve this Judgment and enter it as a judgment of the Court.

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The Court finds that this Consent Judgment is a reasonable and fair settlement and adequately protects the public interest in accordance with the CAA. Entered as a final judgment and order of this Court this       day of       , 2005.

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HONORABLE DORA L. IRIZARRY  
United States District Judge

Date: 6/23/05

By: \_\_\_\_\_  
KEVIN P. MULRY  
Assistant United States Attorney  
147 Pierrepont Street  
Brooklyn, New York 11201

THE UNDERSIGNED PARTY enters into this Consent Judgment in the matter of United States of America v. Advanced Coating Techniques, Inc., Civil Action No. CV-01-5414 (E.D.N.Y.):

FOR PLAINTIFF UNITED STATES OF AMERICA (cont'd):

Date: 6/23/05

\_\_\_\_\_  
ERIC SCHAAF  
Regional Counsel  
Office of Regional Counsel  
U.S. Environmental Protection  
Agency, Region 2

Of Counsel:

FLAIRE HOPE MILLS, ESQ.  
Air Branch Chief  
Office of Regional Counsel  
U.S. Environmental Protection  
Agency, Region 2

THE UNDERSIGNED PARTY enters into this Consent Judgment in the matter of United States of America v. Advanced Coating Techniques, Inc., Civil Action No. CV-01-5414 (E.D.N.Y.):

FOR DEFENDANT ADVANCED COATING TECHNIQUES, INC.:

ADVANCED COATING TECHNIQUES, INC.

Date: 5/23/05

By: \_\_\_\_\_  
Michael Duffy  
Vice President  
311 Wyandanch Avenue  
N. Babylon, New York 11704

Before me this 23 day of May, 2005 came Michael Duffy, to me known, who by me duly sworn, did depose and say that deponent is the Vice President of ADVANCED COATING TECHNIQUES, INC., the corporation described herein, that deponent is duly authorized to execute this CONSENT JUDGMENT on behalf of the corporation, and that he or she is executing this CONSENT JUDGMENT on behalf of that corporation.

\_\_\_\_\_  
NOTARY PUBLIC

Date: 5/25/05

\_\_\_\_\_  
HAROLD SELIGMAN, ESQ.  
LONG, TUMINELLO, BESSO, SELIGMAN  
QUINLAN & WERNER  
Attorneys for Defendant  
120 Fourth Avenue  
Bav Shore, New York 11706-0420